



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

271 Cadman Plaza East
Brooklyn, New York 11201

January 3, 2022

VIA ECF

Honorable Sanket J. Bulsara
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Erick Diaz Cruz v. United States of America and Henry V. Santana*
Case No.: 20-CV-891 (EK) (SJB)

Dear Judge Bulsara:

This Office represents Defendant United States of America in the above-referenced action. The United States writes in compliance with the Court's November 19, 2021 Order, continuing the stay of discovery in this action and directing the government to provide an update to the Court on the status of a pending criminal investigation concerning the facts underlying this case.

By way of background, Plaintiff Erick Diaz Cruz commenced this action on February 20, 2020, against Immigration and Customs Enforcement ("ICE") Officer Henry V. Santana ("Co-Defendant"), asserting claims pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff alleges that Co-Defendant is individually liable for Constitutional violations stemming from a February 6, 2020 incident in which Co-Defendant shot Plaintiff. See Dkt. No. 1. On April 20, 2021, Plaintiff filed an Amended Complaint asserting claims against the United States arising from the same shooting. See Dkt. No. 29 ("Amended Complaint"). Plaintiff brings his claims against the United States pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680.

On August 24, 2021, the United States filed a renewed request for a stay of its response to the Amended Complaint, as well as its response to discovery requests from the other parties. See Dkt. No. 42. The United States requested the stay because the Department of Homeland Security's Office of the Inspector General ("DHS OIG") was working with the Criminal Division of the U.S. Attorney's Office, Eastern District of New York ("Criminal Division"), investigating the shooting underlying this civil action.

On November 3, 2021, the government filed a status letter providing an update on the status of the criminal investigation. See Dkt. No. 51. On November 19, 2021, the parties appeared for a status conference concerning this case. See Court's November 19, 2021 Minute Entry and Order.

Both DHS OIG and the Criminal Division are still working together to complete the investigation. The stay currently expires on January 20, 2021. Because the criminal investigation is ongoing, the United States requests that the stay be continued at this time. The government will provide an update in advance of the expiration of the stay to let the Court know the status of the criminal investigation, as well as whether the government will request that the stay be lifted or be continued.

The government thanks the Court for considering this request.

Respectfully submitted,

BREON PEACE
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cc: All attorneys of record via ECF